



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9798]

RIN 1545-BN37

User Fees for Installment Agreements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide user fees for installment agreements. The final regulations affect taxpayers who wish to pay their liabilities through installment agreements.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: These regulations apply to installment agreements entered into, restructured, or reinstated on or after January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Maria Del Pilar Austin at (202) 317-5437; concerning cost methodology, Eva Williams, at (202) 803-9728 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to the User Fee Regulations under 26 CFR part 300. On August 22, 2016, the Treasury Department and the IRS

published in the **Federal Register** (81 FR 56550) a notice of proposed rulemaking (REG-108792-16) relating to the user fees charged for entering into and reinstating and restructuring installment agreements. The Independent Offices Appropriations Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations establishing user fees for services provided by the agency. Regulations prescribing user fees are subject to the policies of the President, which are currently set forth in the Office of Management and Budget Circular A-25 (the OMB Circular), 58 FR 38142 (July 15, 1993). The OMB Circular allows agencies to impose user fees for services that confer a special benefit to identifiable recipients beyond those accruing to the general public. The agency must calculate the full cost of providing those benefits, and, in general, the amount of a user fee should recover the full cost of providing the service, unless the Office of Management and Budget (OMB) grants an exception under the OMB Circular.

The notice of proposed rulemaking proposed to increase the user fees under §300.1 for entering into an installment agreement from \$120 to \$225 and for entering into a direct debit installment agreement from \$52 to \$107. The notice of proposed rulemaking proposed to increase the user fee under §300.2 for restructuring or reinstating an installment agreement from \$50 to \$89. The notice of proposed rulemaking proposed the introduction of two new types of online installment agreements under §300.1, each subject to a separate user fee: (1) an online payment agreement with a fee of \$149 and (2) a direct debit online payment agreement with a fee of \$31. Under the notice of proposed rulemaking,

the user fee for low-income taxpayers, as defined in §300.1(b)(3), would continue to be \$43 for entering into a new installment agreement, except that the lower fee of \$31 for a direct debit online payment agreement would apply to all taxpayers. Under §300.2(b), the fee for low-income taxpayers restructuring or reinstating an installment agreement would be reduced to \$43 from \$50. The new user fee rates were proposed to be effective beginning on January 1, 2017. As explained in the notice of proposed rulemaking, the proposed fees bring user fee rates for installment agreements in line with the full cost to the IRS of providing these taxpayer-specific services. In particular, the new user fee structure offers taxpayers more tailored installment agreement options, including a \$31 user fee for direct debit online payment agreements, which ensures that taxpayers are not charged more for their chosen installment agreement option than the actual cost incurred by the IRS in providing the type of installment agreement selected by taxpayers. Because OMB has granted an exception to the full cost requirement for low-income taxpayers, low-income taxpayers would continue to pay the reduced fee of \$43 for any new installment agreement, except where they request a \$31 direct debit online payment agreement, and would pay the reduced \$43 fee for restructuring or reinstating an installment agreement.

No public hearing on the notice of proposed rulemaking was held because one was not requested. Five comments were received. After careful consideration of the comments, this Treasury Decision adopts the proposed regulations without change.

Summary of Comments

The first comment suggested that filing a tax return and requesting an installment agreement should not be a two-step process and that taxpayers requesting an installment agreement with the filing of their returns should not be subject to a higher user fee. The comment expressed concern with tying eligibility for the \$31 user fee to submitting a request for a direct debit online payment agreement. The comment also noted the length of time it takes the IRS to initiate direct debit installment agreement payments. The comment asserted that taxpayers requesting installment agreements with the filing of their tax returns and paying via direct debit should be entitled to the \$31 user fee.

These regulations deal with only the user fees for installment agreements and not the administration of the installment agreement program generally, and so this comment is addressed only to the extent it relates to user fees for installment agreements. As explained in the notice of proposed rulemaking, agencies are required to set user fees at an amount that recovers the full cost of providing the service unless an agency requests, and the OMB grants, an exception to the full cost requirement. The proposed installment agreement fees are structured to reflect the full cost to the IRS to establish and monitor the different types of installment agreements associated with each user fee. The costs to the IRS for installment agreements are the same to the IRS whether the taxpayer requests an installment agreement at the same or a different time from filing its tax return. The regulations now offer taxpayers additional types of installment agreements to choose from, including a low-cost user fee of \$31 for a direct debit online payment agreement. A taxpayer may file a return and then

request a direct debit online payment agreement and would be charged a fee of only \$31. As discussed in the notice of proposed rulemaking, the IRS incurs higher costs in establishing and monitoring all other forms of installment agreements. If a taxpayer chooses to request an installment agreement other than a direct debit online payment agreement, that taxpayer must pay the full cost of that user fee unless the taxpayer qualifies as a low-income taxpayer. The length of time required to establish direct debit installment agreements that the comment described is due to IRS budget cuts in recent years that have resulted in lower staffing levels combined with increased workloads. During peak times of the year, the IRS has more installment agreements to process than available staff to process them and backlogs occur. In addition, there are Federal e-pay requirements that also add time in processing installment agreements paid by direct debit. However, taxpayers using the online payment agreement service receive immediate confirmation of direct debit online payment agreements. Taxpayers requesting installment agreements via a Form 9465 when e-filing are not entitled to the lower \$31 user fee under the proposed regulations because the costs associated with processing the Form 9465 are greater than those incurred for taxpayers using the online payment agreement service. At the time taxpayers submit Form 9465 with their e-filed returns, the IRS has no way of determining whether the taxpayers qualify for an installment agreement or whether the payment proposal meets streamlined processing criteria. While the IRS continues to explore ways to make this process completely automated, at

this time the process to review a regular installment agreement request requires IRS staff involvement that direct debit online payment agreements do not.

The second comment expressed concern that the proposed increase in user fees was too high and asked whether “any consideration [has] been given to increasing the time frame for an extension [from] 120[]days to 180[]days.” It appears that the latter part of this comment is referring to the full pay agreement that has no user fee but requires the taxpayer to full pay within 120 days. The extension of the time period for full pay agreements is unrelated to the proposed increase in the user fees for installment agreements. With regard to the increase in fee, the fee increase is consistent with the requirement under the OMB Circular that agencies that confer special benefits on identifiable recipients beyond those accruing to the general public are to establish user fees that recover the full cost of providing those services. In the notice of proposed rulemaking, the IRS provided a detailed analysis of how it calculated the full cost of this service and the fee is consistent with the full cost of the particular service.

The third comment provided examples of taxpayers with varying circumstances and opined that increasing the user fee for installment agreements would be unfair to taxpayers who are so situated. For taxpayers whose income falls at or below 250 percent of the poverty level as established by the U.S. Department of Health and Human Services and updated annually, the proposed regulations continue to offer a reduced fee for low-income taxpayers of \$43, and extend the \$43 fee to low-income taxpayers restructuring or reinstating installment agreements. In addition, the proposed regulations establish a lower

fee of \$31 for online direct debit installment agreements that is available to all taxpayers. Thus, even if taxpayers do not qualify for the reduced low-income taxpayer fee, the proposed regulations permit all taxpayers the option to pay the lower \$31 fee by establishing direct debit online payment agreements.

The fourth comment had four main concerns and additional concerns with respect to each of these main concerns.

The fourth comment's first main concern challenged the IRS's application of the OMB Circular. The comment opined that an installment agreement is not a special benefit as provided under the OMB Circular for several reasons.

Specifically, the comment noted that if a taxpayer does not have assets to levy, then relief of levy is not a benefit to that taxpayer. The comment suggested that the IRS receives a benefit when a taxpayer enters into an installment agreement and as a result, the installment agreement does not provide a special benefit for purposes of the OMB Circular. The comment questioned how many installment agreements resulted in payments that the IRS would not have otherwise received. The comment also questioned whether installment agreement income is a benefit to the fisc or whether the IRS could use levies to secure the same amount of payment. The comment stated that the IRS is required to enter into certain installment agreements pursuant to section 6159(c) and questioned how a statutory requirement could be considered a special benefit. The comment quoted Section 6(1)(4) of the OMB Circular, which provides that "[n]o charge should be made for a service when the identification of the specific beneficiary is obscure, and the service can be considered primarily as benefiting broadly the

general public.” The comment opined that because the IRS may receive some benefit, the specific beneficiary of an installment agreement is incompletely identified. Finally, the comment noted that the OMB Circular allows for exceptions to charging full cost and questioned whether it is good public policy to increase the user fee considering that some installment agreements are statutorily required and help bring noncompliant taxpayers into compliance.

As described in the preamble to the proposed regulations, each taxpayer entering into an installment agreement receives the special benefit of paying an outstanding tax obligation over time rather than immediately. This special benefit does not accrue to the general public because taxpayers are otherwise obligated to pay any outstanding taxes immediately when due. The taxpayer receives this special benefit regardless of whether the taxpayer has any assets on which the IRS could levy. In addition to paying an outstanding tax obligation over time rather than immediately, there are also the special benefits of avoiding enforcement action generally and, for timely filed returns, a reduction of the section 6651 failure to pay penalty to 0.25 percent during any month during which an installment agreement is in effect. The enforcement actions that are put on hold during the pendency of an installment agreement include wage garnishments, the filing of notices of federal tax liens, and the making of levies. Even if it is argued that the government derives some general benefit from collecting outstanding tax liabilities to which it is inarguably entitled, it is still appropriate under the OMB Circular to charge a user fee for entering into, reinstating, or restructuring an installment agreement because installment

agreements provide “specific services to specific individuals.” Seafarers Int'l Union of N. Am. v. U.S. Coast Guard, 81 F.3d 179, 183 (D.C. Cir. 1996). The benefit to the government generally of collecting on outstanding tax liabilities is a benefit that accrues to the public generally and does not diminish the special benefit provided to an identifiable taxpayer who requests an installment agreement. As noted in the notice of proposed rulemaking, the IOAA permits the IRS to charge a user fee for providing a “service or thing of value.” 31 U.S.C. 9701(b). A government activity constitutes a “service or thing of value” when it provides “special benefits to an identifiable recipient beyond those that accrue to the general public.” See the OMB Circular Section 6(a)(1). Among other things, a “special benefit” exists when a government service is performed at the request of a taxpayer and is beyond the services regularly received by other members of the same group or the general public. See OMB Circular Section 6(a)(1)(c). Under the IOAA, agencies may impose “specific charges for specific services to specific individuals or companies.” See Fed. Power Comm'n v. New England Power Co., 415 U.S. 345, 349 (1974); see also Seafarers, 81 F.3d at 182-83 (D.C. Cir. 1996) (“[A] user fee will be justified under the IOAA if there is a sufficient nexus between the agency service for which the fee is charged and the individuals who are assessed.”).

Section 6(a)(3) of the OMB Circular explains that “when the public obtains benefits as a necessary consequence of an agency's provision of special benefits to an identifiable recipient (i.e., the public benefits are not independent of, but merely incidental to, the special benefits), an agency need not allocate any costs

to the public and should seek to recover from the identifiable recipient either the full cost to the Federal Government of providing the special benefit or the market price, whichever applies.” While it is true that installment agreements benefit tax administration and collection, and by extension the public fisc, the benefit is incidental to the special benefits of allowing taxpayers to satisfy their Federal tax liabilities over time rather than when due as required by the Code and avoiding enforcement actions.

By the very nature of government action, the general public will almost always experience some benefit from an activity that is subject to a user fee. See, e.g., Seafarers, 81 F.3d at 184-85 (D.C. Cir. 1996). However, as long as the activity confers a specific benefit upon an identifiable beneficiary, it is permissible for the agency to charge the beneficiary a fee even though the public will also experience an incidental benefit. See Engine Mfrs. Ass’n v. E.P.A., 20 F.3d 1177, 1180 (D.C. Cir. 1994) (“If the agency does confer a specific benefit upon an identifiable beneficiary . . . then it is of no moment that the service may incidentally confer a benefit upon the general public as well.”) citing Nat’l Cable Television Ass’n v. FCC, 554 F.2d 1094, at 1103 (D.C. Cir. 1976). It is permissible for a service for which a user fee is charged to generate an “incidental public benefit,” and there is no requirement that the agency weigh this public benefit against the specific benefit to the identifiable recipient. Seafarers, 81 F.3d at 183-84 (D.C. Cir. 1996). Furthermore, the benefit to the fisc of collecting outstanding taxes is not an additional benefit to the government because the IRS would collect those amounts through other means absent the

installment agreement. Even so, an agency is still entitled to charge for services that assist a person in complying with her statutory duties. See In Elec. Indus. Ass'n v. FCC, 554 F.2d 1109, 1115 (D.C. Cir. 1976).

While the IRS is required to enter into certain installment agreements pursuant to section 6159(c), the IRS may still charge a fee for providing that service. In fact, under the OMB Circular, there are several examples of special benefits (e.g., passport, visa, patent) for which the issuing agency may charge a fee even though the agency is required to issue such benefit if the individual meets certain statutory or regulatory requirements. In addition, a taxpayer meeting the criteria in section 6159(c) must still submit a request for an installment agreement before one is established. Section 6159(c) requires that the IRS enter into the installment agreement provided that the taxpayer establishes its eligibility for such an agreement. In that situation, the IRS incurs the costs of establishing and monitoring these installment agreements as with any other installment agreement. Therefore, it is proper under the OMB Circular to charge a user fee for providing this service.

The IRS has taken public policy into consideration and is providing multiple user fee options to tailor the user fees to the specific IRS costs in establishing and monitoring the installment agreements. As a result, the IRS has introduced a reduced fee of \$31 for direct debit online payment agreements. This \$31 reduced fee is available to all taxpayers choosing to obtain the special benefits of installment agreements by using this service. The \$31 reduced fee reflects the substantially lower costs the IRS incurs for establishing and

monitoring direct debit online payment agreements. Thus, the installment agreement user fee structure now more closely reflects the full cost of processing each specific type of installment agreement.

The fourth comment's second main concern was that the IRS charges user fees inconsistently because, for example, the IRS does not charge user fees for toll-free telephone service, estimated income tax payments, walk-in service, notice letters, annual filing season program record of completion, and administrative appeals within the IRS.

The IRS's user fee policies are consistent with the OMB Circular. The IOAA authorizes agencies to prescribe regulations that establish charges for services provided by the agency, that is, user fees that "are subject to policies prescribed by the President. . . ." One of the OMB Circular's stated objectives is to "ensure that each service . . . provided by an agency to specific recipients be self-sustaining." OMB Circular Section 5(a). The General Policy of the OMB Circular states that "a user charge . . . will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." OMB Circular Section 6. The presumption under the OMB Circular is that agencies are encouraged, but not mandated, to charge user fees where special benefits are provided to identifiable individuals. Installment agreements are such special benefits. For purposes of these regulations, the IRS need only take into consideration comments relating to the installment agreement user fees and need not address comments relating to other services for which no fee is charged. With respect to installment

agreement user fees, the IRS has charged fees since 1995 in accordance with the OMB Circular that requires full cost unless an exception is granted. The OMB Circular requires the IRS to review the user fees it charges for special services biennially to ensure that the fees are adjusted for cost. See OMB Circular Section 8(e). The new installment agreement user fee structure is consistent with that requirement.

The fourth comment's third main concern questioned the "optics" of increasing installment agreement user fees because of IRS budget constraints. As discussed in this Summary of Comments, the IRS has determined that the proposed installment agreement user fees are appropriate and consistent with the OMB Circular, and the question of "optics" raised in this comment is not relevant in this analysis. Section 6(a)(2)(a) of the OMB Circular provides that user fees will be sufficient to recover the full cost to the Government of providing the service except as provided in Section 6(c) of the OMB Circular. The exceptions in Section 6(c)(2) of the OMB Circular provide that agency heads may recommend to the OMB that exceptions to the full cost requirement be made when either (1) the cost of collecting the user fee would represent an unduly large part of the fee or (2) any other condition exists that, in the opinion of the agency head, justifies an exception. The cost of collecting the proposed user fees for the various types of installment agreements will not represent an unduly large part of the fee for the activity because it occurs automatically with the first installment payment. As noted above, Section 6(a)(2)(a) of the OMB Circular requires that user fees recover the full cost to the government of providing the

service and nothing in the OMB Circular mandates agency heads to seek an exception to the full cost requirement. Nonetheless, the Commissioner of Internal Revenue has determined that there is a compelling tax administration reason for seeking an exception to the full cost requirement for low-income taxpayers.

The fourth comment's fourth main concern focused on the overall amount of the proposed user fees and included a number of related comments on the size of the fees, the agency's methodology in calculating the fees, and the efforts the IRS has taken to minimize the costs of providing these services. The comment questioned why the IRS decided not to change the \$43 user fee for low-income taxpayers. The comment asked why the increase in costs of these services exceeded the rate of inflation during the past two years. The comment also questioned the IRS's efficiency in providing this special benefit and the IRS's concern in ensuring that its costs are driven down when providing this service. The comment expressed concern that if installment agreement volumes remained the same, the agency would increase its user fee receipts by tens of millions of dollars. Finally, the comment noted that the user fees do not depend on the balance due under an installment agreement and questioned why the user fee is taken from the first payments due under the installment agreement.

Contrary to what the comment asserted, the per-unit cost of the installment agreement program has not generally increased, rather it has generally decreased. In the 2013 biennial review, the IRS determined that the full cost of an installment agreement was \$282, the full cost of an installment

agreement paid by way of direct debit was \$122, and the full cost of restructuring and reinstating an installment agreement was \$85. See 78 FR 53702 (2013 Regulations). In connection with the 2013 biennial review and the 2013 Regulations, the IRS had requested and received an exception to the full cost requirement under the OMB Circular for the installment agreement user fees. As a result, the 2013 Regulations did not charge full cost for any of the installment agreement options. Requesting an exception to the full cost requirement of the OMB Circular is within the discretion of the agency head and must be approved by the Office of Management and Budget. In the 2015 biennial review, the IRS determined that the full cost of an installment agreement is \$225, the full cost of an installment agreement paid by way of direct debit is \$107, and the full cost of restructuring and reinstating an installment agreement is \$89. Thus, contrary to the comment's assertion, the cost of the installment agreement program has generally decreased rather than generally increased during the span of two years. Furthermore, the IRS always strives to make its services cost-effective. The decrease in the installment agreement costs since 2013 demonstrates one of the ways the IRS seeks to make its services most cost effective for the public. The IRS also seeks new ways to makes its services more accessible to taxpayers. The IRS has worked to improve the usability of the online payment agreement application that provides for significantly lower costs. The user fee for the online payment agreement is \$149, and if the installment agreement is paid by way of direct debit, is only \$31. Practitioners can submit an online payment agreement application on behalf of their clients to secure lower fees. For smaller

tax liabilities, the IRS has established procedures for setting up installment agreements utilizing guaranteed, streamlined, or in-business express criteria that are quicker to process and do not require securing a collection of information statement. See I.R.M. 5.14.5. The IRS has never based its user fee on the amount of liability due under the agreement, which would be inconsistent with the full cost requirement under the OMB Circular. The IRS, however, has provided taxpayers the option to pay their liability in full over 120 days without being charged any user fee. Furthermore, under the new fee structure, taxpayers choose a specific installment agreement service and pay the cost of the service. For example, a taxpayer may choose a direct debit online payment agreement and pay only \$31 or a taxpayer may choose a regular installment agreement and pay \$225. With regard to the user fee being taken from the first payments due under the installment agreement, this is not relevant for purposes of the regulations as this is not addressed in the regulations. Regardless, the OMB Circular requires user fees to be “collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are provided in advance to allow reimbursable services.” Section 6(a)(2)(C) of the OMB Circular. Instead of requiring the taxpayer to pay the entire fee in advance of the IRS entering into the installment agreement, the IRS allows the taxpayer to pay the fee with the first installment agreement payments, thereby lessening the burden on the taxpayer and making installment agreements more accessible to taxpayers.

The fifth comment had three suggestions: (1) eliminate installment agreement user fees for low-income taxpayers, (2) revise internal guidelines to place less emphasis on speedy collection practices and more emphasis on viable collection practices, and (3) increase the transparency of the installment agreement user fees in publications.

The fifth comment's first suggestion was that the IRS should waive the entire user fee for low-income taxpayers and thereby incentivize them to enter into installment agreements instead of being placed in currently not collectible status or entering into an offer in compromise. According to the comment, this would increase the amount of revenue that the IRS collects and encourage taxpayers to enter into compliance. The comment pointed out that there is no user fee for a low-income taxpayer entering an offer in compromise. The IRS's response to a similar comment made to the installment agreement fee increase proposed in the 2013 notice of proposed rulemaking pointed out that the offer in compromise fee is charged for mere consideration of the offer and is not refunded if it is not accepted. The comment claimed that the IRS contradicted itself by further responding that the purpose of a user fee is to recover the cost to the government for a particular service to the recipient.

The comment opined that by waiving the low-income taxpayer user fee entirely, the number of low-income taxpayers making payments on their tax liabilities could increase. By way of example, the comment posited the possibility of a low-income taxpayer submitting an offer in compromise, paying no fee, and the IRS ultimately collecting less than it would have if it had allowed the low-

income taxpayer to enter into an installment agreement with a complete fee waiver. According to the comment, if a low-income taxpayer enters into currently not collectible status and makes voluntary payments, those payments will be sporadic and less than would be collected from an installment agreement since the taxpayer would not receive monthly reminders. The comment referenced the IRS's response to a similar comment made to the installment agreement fee increase proposed in the 2013 notice of proposed rulemaking, to which the IRS responded that generally taxpayers who have the ability to pay their tax liability over time (and thus are eligible for installment agreements) will not qualify for currently not collectible status. In response, the comment suggested that many taxpayers that qualify for currently not collectible status may be mistakenly placed into installment agreements because the taxpayers may feel pressured to make payments, the taxpayers misstate their expenses and income, or the taxpayers are willing to cut back on their monthly living expenses. The comment provided examples to show how the \$43 fee created disincentives for low-income taxpayers to enter into installment agreements in cases where the liability was relatively small. The comment requested that the IRS clarify that the user fee does not have to be paid up front but may be paid in installments if the taxpayer's monthly installment payment is less than the user fee.

The IRS considered the effect of the user fee on low-income taxpayers in 2006 and 2013 when the installment agreement user fees were updated. Both times, the IRS determined that the user fee should remain \$43 for low-income taxpayers. The IRS again has determined that the user fee for installment

agreements (other than for a direct debit online payment agreement) should remain at \$43 for low-income taxpayers, both because requiring the full rate would be financially burdensome to low-income taxpayers and because waiving the fee entirely is not fiscally sustainable for the IRS given the constraints on its resources for tax administration. Typically, a taxpayer that is able to pay in full the liability under an installment agreement is not eligible to enter into an offer in compromise. As discussed in the preamble to T.D. 9647, 78 FR 72016-01, a taxpayer that is in currently not collectible status is typically not eligible to enter into an installment agreement. The low-income taxpayers that enter into installment agreements described in the examples the comment presented do so as a result of the taxpayers' choices or erroneous submissions of information to the IRS. Thus, the comment's hypothetical low-income taxpayer is the exception not the general rule. To ensure that low-income taxpayers are more aware of the fee options for the various types of installment agreements, the IRS will be revising its publications to make them consistent with the final regulations.

The fifth comment's second main concern was that low-income taxpayers are not always aware of the availability of the reduced fee and as a consequence some low-income taxpayers pay the regular fee. The comment suggested that IRS employees could do more to make low-income taxpayers aware of their options. The comment also asserted that installment agreements are set up not to allow low-income taxpayers to modify payments based on unforeseen changes in economic circumstances. The comment stated this can result in low-income taxpayers defaulting and either become subject to collection action or

subject to the installment agreement reinstatement fee of \$89 under the proposed regulations.

The comment requested that the IRS revise its procedures in the Internal Revenue Manual to place less emphasis on timely collection practices and more emphasis on viable collection practices.

The fifth comment's concerns about tax administration are generally beyond the scope of these regulations. However, for purposes of clarification, under the proposed regulations the user fee for reinstating an installment agreement for a low-income taxpayer would be \$43, not \$89. Furthermore, while these concerns do not affect the content of these final regulations, the IRS will consider these comments when updating the procedures in the Internal Revenue Manual for entering into installment agreements.

The fifth comment's third suggestion was for the IRS to clearly communicate to the public both through the internet and in hard copy publications the revised fee schedule so that taxpayers may make informed decisions when deciding the manner of setting up an installment agreement. The comment suggested that taxpayers who lack access to the internet, lack computer efficiency, lack a bank account, or have other disabilities or barriers should not be subjected to the higher user fees.

The IRS will be updating its electronic and hard copy publications to reflect the user fees in the final regulations. As explained in the proposed notice of rulemaking and in this Summary of Comments, the purpose of the user fees for installment agreements is to recover the full cost to the IRS of providing this

special benefit to specific beneficiaries and the user fees in these final regulations are in accordance with the OMB Circular.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. The dollar amount of the fee is not, however, substantial enough to have a significant economic impact on any entity subject to the fee. Low-income taxpayers and taxpayers entering into direct debit online payment agreements will be charged a lower fee, which lessens the economic impact of these regulations. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

Drafting Information

The principal author of these regulations is Maria Del Pilar Austin of the Office of the Associate Chief Counsel (Procedure and Administration). Other

personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

PART 300--USER FEES

Paragraph 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

Par. 2. In §300.1, paragraphs (b) and (d) are revised to read as follows:

§300.1 Installment agreement fee.

* * * * *

(b) Fee. The fee for entering into an installment agreement before January 1, 2017, is \$120. The fee for entering into an installment agreement on or after January 1, 2017, is \$225. A reduced fee applies in the following situations:

(1) For installment agreements entered into before January 1, 2017, the fee is \$52 when the taxpayer pays by way of a direct debit from the taxpayer's bank account. The fee is \$107 when the taxpayer pays by way of a direct debit from the taxpayer's bank account for installment agreements entered into on or after January 1, 2017;

(2) For online payment agreements entered into before January 1, 2017, the fee is \$120, except that the fee is \$52 when the taxpayer pays by way of a direct debit from the taxpayer's bank account. The fee is \$149 for entering into online payment agreements on or after January 1, 2017, except that the fee is \$31 when the taxpayer pays by way of a direct debit from the taxpayer's bank account; and

(3) Notwithstanding the type of installment agreement and method of payment, the fee is \$43 if the taxpayer is a low-income taxpayer, that is, an individual who falls at or below 250 percent of the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357, 511), or such other measure that is adopted by the Secretary, except that the fee is \$31 when the taxpayer pays by way of a direct debit from the taxpayer's bank account with respect to online payment agreements entered into on or after January 1, 2017;

* * * * *

(d) Applicability date. This section is applicable beginning January 1, 2017.

Par. 3. In §300.2, paragraphs (b) and (d) are revised to read as follows:

§300.2 Restructuring or reinstatement of installment agreement fee.

* * * * *

(b) Fee. The fee for restructuring or reinstating an installment agreement before January 1, 2017, is \$50. The fee for restructuring or reinstating an

installment agreement on or after January 1, 2017, is \$89. If the taxpayer is a low-income taxpayer, that is, an individual who falls at or below 250 percent of the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357, 511), or such other measure that is adopted by the Secretary, then the fee for restructuring or reinstating an installment agreement on or after January 1, 2017 is \$43.

* * * * *

(d) Applicability date. This section is applicable beginning January 1, 2017.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: November 16, 2016.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016-28936 Filed: 11/29/2016 11:15 am; Publication Date: 12/2/2016]